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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 344

ATLANTIC COAST LINE RAILROAD COMPANY,

Appellant,

versus

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE AND W. B. DOUGLASS, ETC., ET AL.,

Appellees.

No. 345

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE AND W. B. DOUGLASS, ETC., ET AL.,

Cross-Appellants,

versus

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Cross-Appellees.

RESPONSE OF ATLANTIC COAST LINE RAILROAD COMPANY TO MOTION FOR CONSTRUCTION OF OPINION AND CONFORMITY OF MANDATE THERETO FILED BY APPELLEES AND CROSS-APPELLANTS IN THE ABOVE STATED CAUSES.

CARL H. DAVIS,
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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes Atlantic Coast Line Railroad Company, appellant and cross-appellee in the above stated causes and re-

spectfully makes this response to the motion of appellees and cross-appellants for construction of the opinion of this Court in the above stated cases entered on April 29, 1935; and for response to said motion says:

1. The quotation contained in the first paragraph of the aforementioned motion from the opinion of this Court is correct as far as it goes. It does not state all of the relevant parts of the opinion of the Court.

2. The quotation from the minority opinion as set out in paragraph 2 of said motion is correct, though it does not state all of the relevant parts of the minority opinion.

2a. Atlantic Coast Line Railroad Company denies that the opinion of this Court in these cases is ambiguous. It is entirely plain that that opinion requires a judgment which will be *res adjudicata* of the cause. To show that the opinion is perfectly clear we quote therefrom as follows:

> "We think the claim for restitution should have been rejected altogether."

We also quote the closing paragraph of the opinion:

> "The decree is reversed and the cause remanded with instructions to dismiss the claims."

The above quoted direction from the opinion to the effect that the decree is reversed and the cause remanded with instructions to dismiss the claims is an adjudication that the claims be dismissed on their merits and "is a bar to any new bill between the same parties upon the same matter." See *Black on Judgments*, §720, Vol. 2, page 1079; *Baker v. Cummings*, 181 U. S. 117; *Southern Pacific Rd. Co. v. United States*, 168 U. S. 1; and *Durant v. Essex Company*, 7 Wallace 107.

We quote from the *Durant* case as follows:

"A decree dismissing a bill in an equity suit in the Circuit Court of the United States, which is absolute in its terms, unless made upon some ground which does not go to the merits, is a final determination of the controversy, and constitutes a bar to any further litigation of the same subject between the same parties."

See also *Case* v. *Beauregard*, 101 U. S. 688.

The quotation from the minority opinion when put in contrast with the quotation from the majority opinion confirms and clarifies the purpose of the Court to make a finality of this long pending cause.

3. It is admitted that appellees and cross-appellants, Wilson Cypress Company, Cummer Cypress Company and Wilson Lumber Company of Florida filed in the proper State courts of the State of Florida their separate actions at law against Atlantic Coast Line Railroad Company for the recovery of said claims; that is, for recovery of the identical claims which they sought to enforce in the present proceeding. It is further admitted that those actions were filed February 13, 1934. The claims for restitution on identically the same subject matter had been pending in the United States District Court for the Northern District of Georgia in equity since February 28, 1931 (R. 7), by Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company and by the State of Florida and its Railroad Commissioners and since March 2, 1931 (R. 11), by Wilson Lumber Company of Florida. The said causes have been in constant and continuous litigation in the United States District Court for the Northern District of Georgia and on appeal in this Court since the above mentioned dates with the result that this Court on April 29, 1935, entered its opinion directing final disposition thereof.

Contemporaneously with the proceedings in the particular matter now at hand the Interstate Commerce Commission reopened its original proceeding; that is, the one involved in this cause and before this Court in its decision rendered January 5, 1921, and reported in 282 U. S. 194 and likewise reported in 146 I. C. C. 717 under the name of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company. The Commission made its report in said reopened proceeding which is to be found in 186 I. C. C. 157 (R. bound volume of exhibits, p. 171) under the name of Georgia Public Service Commission versus Atlantic Coast Line Railroad Company. The rates there under consideration were the same as those involved in said proceeding and in the one at bar. The Interstate Commerce Commission reaffirmed its order entered in 146 I. C. C. 717 (p. 16, first record) and made a lengthy report affirming every intermediate and basic finding made by it in its first report except as to undue prejudice against persons and localities in interstate commerce. The Commission in its second report and order did not pass upon this last contention.

The United States District Court for the Northern District of Georgia refused to enjoin the orders of the Interstate Commerce Commission (4 Fed. Supp. 477) and this Court affirmed the findings of the lower court. See *Florida v. United States*, 292 U. S. 1.

4. Atlantic Coast Line Railroad Company has previously answered this paragraph to the effect that there is no ambiguity in the opinion of this Court; and that the opinion requires a decree adjudging that the appellees and cross-appellants are not entitled to the relief sought by them, but that on the other hand, that relief should be denied.

5. The answer to the other paragraphs of this motion should be applied to paragraph five.

6. Further responding to this motion Atlantic Coast Line Railroad Company alleges that the United States District Court for the Northern District of Georgia had jurisdiction of the motions for restitution in each of these constituent cases. That position is stated by the minority opinion in the first lines of the fifth part of the opinion; and it is also recognized in the majority opinion, so that there is no room to doubt that the United States District Court had jurisdiction over the persons and subject matter of these cases, and of the consolidated cause. The minority opinion would, if it were the opinion of the Court, require an adjudication on the merits of the case. The majority opinion of the Court likewise requires an adjudication of the case on its merits and states the disposition to be made thereof.

The claimants elected to seek restitution in equity in the cases pending in the United States District Court; that is, in the cases which they had brought in that court for the purpose of having the Interstate Commerce Commission's order set aside. Those cases were consolidated and proceeded as a consolidated cause. Claimants filed their motions in equity in said cases in February and March, 1931 for restitution and sought reference to a special master for the ascertainment of the amount of restitution properly to be made by the Atlantic Coast Line Railroad Company to them respectively. The motions further moved the court to retain jurisdiction of the causes and of the parties

> "to the end that such other and further proceedings may be had, and such other and further orders and decrees may be entered with respect to restitution, costs and any and all other proper matters as are according to right and justice and the laws of the United States." (R. 10).

The litigation on those motions for restitution proceeded in the United States District Court on reference to a mas-

ter, hearings were had before him, report was made by him, exceptions were filed thereto; the cause was re-referred to the master, there were further hearings with a second report and exceptions thereto and finally the opinion of the District Court on the exceptions to the master's second report, which opinion was filed January 26, 1934 (R. 349).

It was only after this opinion of January 26, 1934 was filed that the appellees and cross-appellants on February 13, 1934 filed their separate actions at *law* in the Florida State court against this respondent for recovery on overcharges based on the same claims. Practically three years of litigation in *equity* in the United States District Court had elapsed before they then sought to recover *at law*. In other words, they first elected to go into the United States District Court seeking their remedy in equity and claiming restitution therein. Then, while continuing to prosecute that election, they made another and different election and go into the Florida courts and sue at law for overcharges, based on the same subject-matter.

When they elected to sue in equity for restitutions, they made their election of their remedy and could not, while clinging to that remedy, make another and different election both as to the nature of their rights and as to the forum for the assertion thereof.

7. At the time the appellees and cross-appellants elected to file their suits at law in the Florida state court, the United States District Court in equity had rendered the opinion aforesaid under which said appellees and cross-appellants were adjudged to be entitled to recover 34% of the amount sought by them as restitution.

8. The majority opinion of this Court treats this case as one in equity and the minority opinion treats it as one at law. The minority opinion holds that:

"This is not a case in which equitable considerations have any place."

The majority opinion holds that the equities should be taken into consideration and that the findings of fact by the Interstate Commerce Commission show that "restitution is without support in equity and conscience, whatever support may come to it from procedural entanglements."

It is inconceivable that recovery against the Railroad Company should be allowed based upon an unconstitutional rate and especially while that rate was being contested in accordance with the decisions of the State of Florida effective at the time of the contest and which remained in effect until after the District Court had rendered its decree and until after this Court had undertaken the consideration of the cause.

It is respectfully submitted that the motion of the appellees and the cross-appellants for construction of the opinion and conformity of mandate thereto should be denied.

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